

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, ARUNACHAL PRADESH AND MIZORAM)

WP(C) No.4752 of 2015

Petitioners:

Sri Binod Kumar & 25 others.

Respondents:

The State of Assam & others.

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. AJIT SINGH
HON'BLE MR. JUSTICE MANOJIT BHUYAN**

For the petitioners : Mr.KN Choudhury, learned
Senior counsel assisted by Mr.DJ Das,
learned counsel

For the Respondents : Mr.RKD Choudhury, learned Senior
Government Advocate, Assam

Date of hearing & Judgment: 5.12.2017

JUDGMENT AND ORDER

(Ajit Singh, C.J.)

In the present petition, the petitioners have challenged the validity of Rule 63(iii) of Part-I and Chapter IV of the Assam Police Manual. It reads as under:-

"63 (iii) Superintendent of Police – the report should be initiated by Deputy Commissioner, reviewed by Deputy Inspector General of Police i/c Range and sent to the Commissioner of Division. The Commissioner of Division will send the same with his opinion to the Inspector General of Police for acceptance. The Inspector General of Police shall refer the report to the Deputy Inspector General of Police, S.B., for recording his remarks regarding performance of the Superintendent of Police of the District in subjects pertaining to S.B."

2. The petitioners belong to the Indian Police Service and their services have been allotted to the Assam Wing of Assam/Meghalaya Joint Cadre. They are seriously aggrieved with the above quoted Rule which makes the Deputy Commissioner as 'reporting officer' of the District Superintendent of Police

even though, according to them, the Deputy Commissioner does not fall in the departmental hierarchy of the Police service. They submit that the Annual Confidential Reports (ACRs)/Annual Performance Appraisal Reports (APARs) of Superintendent of Police CID, Special Branch, Anti Corruption Bureau, Vigilance and Bureau of Economic Offences and Border are initiated by their respective Deputy Inspectors General of Police, but despite enactment of the Assam Police Act, 2007 (in short "Act, 2007"), this system has illegally not been introduced in the case of District Superintendent of Police.

3. The petitioners also submit that when the Police Act, 1861 was brought into force, the judiciary was not separated from the executive, as a result of which, the District Magistrate was the head of criminal administration of a District. And, during that time, the District Magistrate enforced his authority and fulfilled his responsibility to maintain law and order with the help of police force. Therefore, under such circumstances, the Deputy Commissioner or the District Magistrate was vested with the power to initiate the performance report of the Superintendent of Police of the District. However, after the separation of judiciary from the executive in the State, the District Magistrate is no longer the head of criminal administration of a District in the State. Likewise, the duties of both the Deputy Commissioner and Superintendent of Police in a District have undergone radical changes with the addition of many responsibilities, but the Rule to initiate performance appraisal of District Superintendent of Police by the Deputy Commissioner has not been changed. The petitioners further submit that the practice of initiating performance appraisal of the District Superintendent of Police by the Deputy Commissioner originally prevailed in the British Province of Bengal, Bihar and Orissa, but later, some progressive governments like West Bengal, Jammu & Kashmir, Himachal Pradesh, Maharashtra have removed this old system by introducing a new system where departmental hierarchy is prevalent and now ACRs/APARs of the District Superintendent of Police is initiated by a superior officer of the Department.

4. According to the petitioners, Section 5(1) of the Act, 2007 provides that the overall power of directing and supervising the police force is vested in the Director General of Police of a State and the prevailing procedure of initiating

ACRs/APARs of the District Superintendent of Police by the Deputy Commissioner dilutes the administrative control of police headquarter. The petitioners have strongly placed reliance on Section 14(2) of the Act, 2007, which says that the Deputy Commissioner as District Magistrate shall have no authority to interfere with the internal organization and discipline in the police force. According to the petitioners, Section 14(2) under no stretch of imagination provides that the Deputy Commissioner shall supervise the performance of the Superintendent of Police and therefore, the impugned Rule 63(iii) is in direct conflict with Section 14(2) of the Act, 2007. The petitioners in support of their submission have cited two decisions of the Supreme Court rendered in *State of Haryana vs. P.C.Wadhwa, (1987) 2 SCC 602* and *T.N.Godavarman vs. Union of India, (2007) 15 SCC 280*.

5. The Home & Political Department of the State of Assam has defended the validity of Rule 63 on the ground that the District Magistrate is the executive head of the District and the practice of initiating of ACRs/APARs of the District Superintendent of Police by the Deputy Commissioner is time proven with no complaint whatsoever. The Department has referred Section 14(1) of the Act, 2007, which says that the administration of police throughout the local jurisdiction of the Magistrate is vested in the Superintendent of Police under the general control and direction of the Deputy Commissioner as District Magistrate and that the Deputy Commissioner is responsible for keeping peace and maintenance of law and order in a district and may employ the police as he thinks best for the purpose. Also, according to Section 15, the district police force is required to work in co-ordination with the district administration on certain important matters. Mainly on these grounds, the Department has prayed for dismissal of the writ petition.

6. The Director General of Police, in his separate affidavit, has supported the case of petitioners by saying that Assam Police is a disciplined organization and in the interest of ensuring efficiency and accountability it is highly essential to maintain the linear hierarchy of reporting, command and control amongst its officers and men. The Director General of Police had also made a proposal to amend the Rule, but the Home Department, vide memo dated 4.2.2015, rejected the same allowing the prevailing system to continue.

7. The main question which calls for our consideration is whether Rule 63 (iii) of the Assam Police Manual is in conflict with Section 14(2) of the Act, 2007 and hence invalid?

8. To answer the question, we shall first refer to Section 4 of the Police Act, 1861 (now repealed) which reads as follows:-

"4. Inspector-General of Police, etc. - The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General, as the State Government shall deem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the State Government shall consider necessary."

The second paragraph of the above quoted Section 4 provided that the administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the State Government shall consider necessary. And in consistent with this second paragraph of Section 4, the impugned Rule 63(iii) was made under Section 46 of the Police Act, 1891. As seen above, Rule 63(iii) provides that the report of the District Superintendent of Police should be initiated by the District Commissioner who is also the District Magistrate of the District.

9. The Act, 2007 has repealed the Police Act, 1861 insofar as it applies to the State of Assam. Section 115 of the Act, 2007, however, states that the Assam Police Manual, being in force in the State of Assam, shall be treated as Rules under this Act, till replaced, modified or amended, as the case may be.

10. Section 5 of the Act, 2007 enumerates the hierarchy of police officers in the State of Assam with the Director General of Police as the Head of the police hierarchy.

11. Section 14 of the Act, 2007 reads as under:-

"14. Relationship of Superintendent of Police with District Magistrates – (1) The administration of the police throughout the local jurisdiction of the Magistrate is vested in the Superintendent of Police under the general control and direction of the Deputy Commissioner as District Magistrate. The latter is responsible for keeping peace and maintenance of law and order in a district and may employ the police as he thinks best for the purpose.

(2) The Deputy Commissioner as District Magistrate has however, no authority to interfere in the internal organization and discipline of the police force, but it is his duty to bring to the notice of the Superintendent of Police, all cases in which the conduct of and qualification of Police Officer affect the general administration of a district."

It is clear from the above quoted sub-section (2) of Section 14 of the Act, 2007 that the Deputy Commissioner as District Magistrate has no authority to interfere in the internal organization and discipline of the police force, but it is his duty to bring to the notice of the Superintendent of Police, all cases in which the conduct of and qualification of Police Officer affect the general administration of a district. This provision in the Act, 2007 makes an apparent departure from Section 4, second paragraph of the Police Act, 1861 which, after its repeal, is no longer in force. The result is that under Act, 2007 the Deputy Commissioner or District Magistrate is no longer the 'reporting authority' of the Superintendent of Police.

12. Moreover, Rule 2(j) of the All India Services Performance Appraisal Report Rules, 2007 provides that 'reporting authority' means such authority or authorities supervising the performance of the member of the service reported upon as may be specifically empowered in this behalf by the Government. The District Superintendent of Police is invariably a member of the Indian Police Service to which the All India Services Act, 1951 and the All India Services Performance Appraisal Report Rules, 2007 apply. This Rule 2(j) of the All India Services Performance Appraisal Report Rules, 2007 read with the Act, 2007 would mean that 'reporting authority' of the Superintendent of Police is not the Deputy Commissioner or the District Magistrate of a District, but the immediate superior officer of the District Superintendent of Police in the Police Force of the State as provided in Section 5 of the Act, 2007.

13. In *State of Haryana vs. P.C.Wadhwa* (supra), the Supreme Court has interpreted an identical provision in Rule 2(e) of the All India Services (Confidential Rolls) Rules, 1970 to hold that the Inspector General of Police, Haryana is the Head of the Police Department and his reporting authority cannot be the Home Secretary but the Minister in charge. In this case, more importantly, the Supreme Court has also held that apart from any legal provision, it is just and proper that a reporting authority must be a person to whom the member of the service is answerable for his performances. In other words, the reporting authority should be a person higher in rank than the member of the service. Later in *T.N.Godavarman Thirumalpad vs. Union of India* (supra) the Supreme Court reiterated the principle of linear hierarchy and held that in the State of Madhya Pradesh for the Assistant Conservator of Forests, the reporting authority can only be the Divisional Forest Officer and for him the reporting authority would be the Conservator of Forests and for the Conservator of Forests the reporting authority has to be the Chief Conservator of Forests and for the Chief Conservator of Forests the reporting authority has to be the Additional Principal Chief Conservator of Forest and lastly for the Additional Principal Chief Conservator of Forest the reporting authority will be the Principal Chief Conservator of Forest. It is only in case of the Principal Chief Conservator of Forest that the reporting authority will be person other than one belonging to the Indian Forest Service.

14. For these reasons, we have no hesitation in holding that Rule 63(iii) is in direct conflict with Section 14(2) of the Act, 2007 and hence, it is invalid. We accordingly declare that the reporting authority of the District Superintendent of Police shall be an officer higher in rank of that post and a member of the State Police Force.

The petition is allowed, but with no cost.

JUDGE

CHIEF JUSTICE

Skd/-